

# *Commonwealth of Massachusetts Plan Document*



## *IRC 457 Deferred Compensation Plan*

# **COMMONWEALTH OF MASSACHUSETTS EMPLOYEES DEFERRED COMPENSATION PLAN**

(Effective as of December 2005)

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## ARTICLE I INTRODUCTION

The Treasurer and Receiver General of the Commonwealth of Massachusetts, acting in his capacity as the Administrator of the Commonwealth of Massachusetts Employees Deferred Compensation Plan (hereinafter called the "Plan"), hereby amends and restates the Plan effective December 30, 2005. The Plan is maintained pursuant to Section 457(b) of the Internal Revenue Code of 1986, as amended ("Code") and Chapter 29, Section 64 of the General Laws of Massachusetts.

The Plan is available for employees and independent contractors who perform service for the Commonwealth of Massachusetts or any political subdivision, body politic and corporate, or public instrumentality created by the Commonwealth or any city, town or group thereof, including, without limitation, an agency, authority, board, corporation or district including without limitation any regional school, police, fire, refuse or sewer district (hereinafter referred to as a "governmental body") if such governmental body has adopted the Plan.

To adopt this Plan, a governmental body shall, following the adoption of an appropriate resolution or the taking of such other legal action appropriate to authorize the adoption, execute a joinder agreement with the Administrator wherein such governmental body agrees to accept the provisions of this Plan as its own plan of deferred compensation pursuant to Code Section 457(b). Any such governmental body that so adopts the Plan shall be deemed thereby to appoint the Administrator as its exclusive agent to exercise on its behalf all of the power and authority conferred upon the Administrator under the Plan document. The authority of the Administrator to act as such agent shall continue until the Plan is terminated as to such governmental body and the relevant Deferred Compensation has been distributed or transferred to another eligible deferred compensation plan.

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement for services between the Participant and the Employer nor shall it be deemed to give a Participant any right to be retained in the employ of, or under contract to, the Employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between a Participant and the Employer as this Plan is intended to be a supplement thereto.

## ARTICLE II DEFINITIONS

- 2.01 **Account.** The sum of the Deferred Compensation Account and the Rollover Account maintained for each Participant (or Beneficiary, upon the death of the Participant).
- 2.02 **Administrator.** The Treasurer and Receiver General of the Commonwealth or any person or body statutorily given authority, on behalf of the Commonwealth, to administer the Plan and allow for deferral of compensation hereunder.

**2.03 Beneficiary.** The person, persons or legal entity designated by the Participant in any writing on a form acceptable to the Administrator and received by the Administrator prior to the Participant's death, to receive any undistributed deferred compensation which becomes payable upon the Participant's death. The Participant may name an individual, trust, his or her estate, or such other legal entity as may be permitted under applicable law as Beneficiary. However, a Participant cannot designate a Beneficiary by relationship or class, and any such attempted Beneficiary designation will be void. Nothing herein shall prevent the Participant from designating more than one Beneficiary or primary and secondary Beneficiaries or changing the designation of a Beneficiary. If two or more designated beneficiaries or less than all designated Beneficiaries, survive the Participant, payments shall be made equally to all such Beneficiaries (per capita not per stirpes), unless otherwise provided in writing on a form acceptable to the Administrator and received by the Administrator prior to the Participant's death. Elections made by a Participant in writing on a form acceptable to the Administrator and received by the Administrator prior to the Participant's death shall be binding on any such Beneficiary or Beneficiaries except for the right of a Beneficiary as provided in Sections 6.03 and 6.04.

Any statement in a Beneficiary designation attempting to state or create a condition or restriction upon the Beneficiary's receipt or enjoyment of any Deferred Compensation is invalid and the Beneficiary is entitled to any Deferred Compensation without regard to any attempted condition or restriction.

A divorce, separation or other court order, action or proceeding of any kind regarding a marriage (whether statutory or common law), or a revocation of a domestic partner registration, or a termination or revocation of any marriage has no effect on any Beneficiary designation under this Plan.

If a Participant fails to designate a Beneficiary, if the Beneficiary predeceases the Participant, or if the Beneficiary designation is invalid, the person(s) entitled to the residuary estate of the Participant's estate is (are) the Beneficiary(s), to the extent of the invalid designation, with the applicable share of the Deferred Compensation divided among those Beneficiaries in the same shares as their shares of the residuary estate. For the purposes of this provision, the Administrator may rely on the written statement of the duly appointed personal representative of the Participant's probate estate as to the identity (including name, address, and Taxpayer Identification Number) of and shares allocable to the person(s) entitled to such residuary estate. For this purpose, the duly appointed personal representative of the Participant's probate estate means the person named by an order of the court (or of a registrar or administrator under the court's supervision) having jurisdiction over the estate of the Participant that grants the person the authority to receive the property of the deceased Participant. If for any reason the Beneficiary designation becomes invalid, or the Participant's probate estate is closed, any person(s) or entity asserting a claim to be a Beneficiary must present to the Administrator a court order declaring entitlement and share of the funds credited to the Participant's Account to which they are entitled.

**2.04 Code.** The Internal Revenue Code of 1986, as amended from time to time.

**2.05 Compensation.** All payments made by the Employer as remuneration for services rendered including salary, bonus, overtime and other similar forms of payment. Compensation shall

include that portion of such amount deferred by the Participant as Deferred Compensation Contributions under this Plan. Compensation shall also include accumulated sick pay, accumulated vacation pay and back pay in accordance with Section 4.02 f. Back pay is pay received in a tax year(s) for actual or deemed employment in an earlier tax year(s) and includes delayed wage payments as well as retroactive pay increases. Damages for personal injury, interest, penalties, and legal fees included with back pay awards, are not wages.

**2.06 Deferral Agreement.** Any written agreement between the Employer and a Participant setting forth certain provisions and elections relative to the Plan, establishing the amount of Deferred Compensation and the manner and method of paying benefits under the Plan, incorporating the terms and conditions of the Plan and establishing the Participant's participation deferrals under the Plan. A Participant who meets the eligibility requirements under Sections 4.01 and/or 15.01 may have more than one Deferral Agreement in effect under the Plan. The Administrator shall determine any requirements applicable to any such Deferral Agreement(s).

**2.07 Deferred Compensation.** The amount of total annual remuneration, as designated in any Deferral Agreement which is made a part hereof, which the Participant and the Employer mutually agree shall be deferred in accordance with the provisions of this Plan, subject to the limitations described below. For purposes of the Plan, Deferred Compensation shall include any Employer Contributions made hereunder.

a. **Normal Limitation.** The maximum amount that may be deferred under this Plan for a Participant's taxable year, except as provided in Subsection 2.07 c. or d. , is the lesser of

1. \$15,000 in 2006 and such amount as may be prescribed by the Secretary of the Treasury pursuant to the Code for years after 2006; or
2. 100% of the Participant's Includible Compensation.

Such amount is intended to reflect the limitation under Code Section 457(b), and shall be modified to reflect any changes in such Code Section.

b. **Other Plans.** The maximum amount deferred under one or more eligible plans under Section 457(b) of the Code for any taxable year, except as provided in Subsection 2.07 c. or d., shall not exceed \$15,000 in 2006 and such amount as may be prescribed by the Secretary of the Treasury pursuant to the Code for years after 2006). Such amount is intended to reflect the limitation under Code Section 457(b), and shall be modified to reflect any changes in such Code Section.

c. **Last Three Years Catch-up Limitation.** For each one of a Participant's last three taxable years ending prior to, but not including, the year of such Participant's Normal Retirement Age, as elected by the Participant pursuant to Section 2.20, the limitation set forth in Subsection 2.07 a. shall be increased to the lesser of:

1. twice the dollar amount in effect under Subsection 2.07 a.1.; or

2. the sum of the Normal Limitation set forth in Subsection 2.07 a., plus so much of the Normal Limitation which has been underutilized in all prior taxable years since January 1, 1979 or since the plan inception date, if later.

For purposes of this Subsection c., a prior taxable year can be taken into account: (1) if the Participant was eligible to participate in the Plan or any similar prior plan of the same Employer or another employer in the same state during any portion of any prior taxable year; and (2) if the compensation deferred, if any, under such plan or the Plan during such prior taxable years was subject to a maximum deferral limitation as required by Section 457(b) of the Code.

A Participant may elect to utilize the Last Three Years Catch-up Limitation once in this Plan or any other similar plan, notwithstanding the fact that the Participant utilizes the Catch-up Limitation in less than all of the three eligible years.

The Last Three Years Catch-Up Limitation is intended to reflect such limitation under Code Section 457(b), and shall be modified to reflect any changes in such Code Section.

- d. **Age 50 Catch-Up Election.** Elective deferrals with respect to an employee whose 50th or higher birthday would occur before the end of the employee's taxable year, if in excess of the applicable limit under Subsection 2.07 a., are treated as catch-up contributions only to the extent that such elective deferrals do not exceed the lesser of:

- (1) The participant's compensation for the taxable year.

- (2) \$5,000 for 2006, and such amount as may be prescribed by the Secretary of the Treasury pursuant to the Code for years after 2006.

The catch-up contributions permitted under this Subsection 2.07 d shall not apply for any taxable year for which a higher limitation applies to such participant under Subsection 2.07 c. The Age 50 Catch-Up Election is intended to reflect the limitation under Code Section 414(v), and shall be modified to reflect any changes in such Code Section.

- 2.08 **Deferred Compensation Account.** The account maintained for each Participant (or Beneficiary, upon the death of the Participant) that is credited with the Participant's Deferred Compensation, any Employer Contributions made on his behalf, and any earnings or losses credited thereon. This includes eligible rollover and transfer accounts.
- 2.09 **Deferred Compensation Committee.** The three person committee, one each appointed by the Governor, the Treasurer and the Insurance Commissioner, charged under Chapter 29, Section 38B of the Massachusetts General Laws with responsibility for overseeing the day-to-day operations of the Plan.
- 2.10 **Employee.** The term Employee shall have the same meaning as "Employee", "Employee of the general court" and "head of his department" as defined in Section 1 of Chapter 32 of the Massachusetts General Laws and members of the judiciary.

- 2.11 **Employer.** For Participants performing services for the Commonwealth of Massachusetts, the Employer is the Commonwealth. For Participants performing services for a governmental body that has adopted the Plan, the Employer is such governmental body.
- 2.12 **Eligible Employee:** Any individual employee of the Employer or individual who performs services for the Employer by appointment, election or contract, for which Compensation is paid and who meets the criteria set forth in Section 4.01 or Section 15.01.
- 2.13 **Eligible Retirement Plan.** (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract), (iii) a qualified trust within the meaning of Section 401(a) of the Code, (iv) an annuity plan described in Section 403(a) of the Code, (v) an eligible deferred compensation plan described in Section 457(b) of the Code that is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code, or (vi) an annuity contract described in Section 403(b) of the Code.
- 2.14 **Employer Contributions.** The Employer, with the consent of the Administrator, may contribute to the Plan for Participants. Employer Contributions shall be aggregated with any Deferred Compensation for purposes of determining compliance with the Normal Limitation, Last Three Years Catch-up Limitation, or Age 50 Catch-Up Limitation. Employer Contributions shall be payable to Participants at the same time and in the same manner as Deferred Compensation.
- 2.15 **Excess Contributions.** Contributions for any calendar year that exceed the Normal Limitation, Last Three Years Catch-up Limitation, or Age 50 Catch-up Limitation, as applicable. Excess Contributions, and any positive earnings thereon, will be refunded by the Employer to the Participant as soon as administratively practicable.
- 2.16 **Includible Compensation.** Compensation, as defined in Code Section 415(c)(3), for services performed for the Employer. The amount of Includible Compensation is determined without regard to any community property laws.
- 2.17 **Independent Contractor.** Any person receiving any type of Compensation from the Employer or any of its agencies, departments, subdivisions or instrumentalities for which services are rendered pursuant to one or more written or oral contracts, if such person is not an Employee.
- 2.18 **Investment Option.** An Investment Product that has been approved by the Administrator and made available under the Plan.
- 2.19 **Investment Product.** Any financial instruments approved for the investment of Deferred Compensation. These may include mutual funds, annuity contracts, life insurance contracts, bank investment trusts, and any other vehicle in which the Plan is allowed to invest pursuant to the laws of the Commonwealth of Massachusetts.
- 2.20 **Normal Retirement Age.** For purposes of the Last Three Years Catch-up Limitation under Subsection 2.07 c., the Normal Retirement Age shall be age 70 ½, unless prior to that time, another Normal Retirement Age is elected in writing by the Participant. In selecting an



alternate Normal Retirement Age, a Participant can choose any age which is: (1) not earlier than the earliest age at which the Participant has the right to retire and receive unreduced retirement benefits from the Employer's basic pension plan; and (2) not later than the date the Participant attains age 70 ½.

Notwithstanding the above, a Participant who continues in the service of the Employer after age 70 ½, and has not utilized the Last Three Years Catch-up Limitation, may elect a later Normal Retirement Age. Any such age elected, however, may not be later than the Participant's actual date of Separation from Service with the Employer.

- 2.21 **Participant.** Any Eligible Employee who fulfills the requirements of Article IV and/or Article XV.
- 2.22 **Part-time Employee.** Any Employee who normally works 20 hours or less per week. A teacher employed by a post-secondary institution is not a Part-time Employee if he or she normally has classroom hours of one-half or more of the number of classroom hours reasonably designated by the educational institution as constituting full-time employment.
- 2.23 **Plan Coordinator.** The Commonwealth or any entity hired by the Commonwealth to perform marketing, record keeping, counseling and/or reporting functions for this Plan.
- 2.24 **Plan Trustee.** Any person or body appointed by the Administrator to act as trustee for the sole purpose of ensuring that all investments, amounts, properties and rights held under a Plan-Trust are held for the exclusive benefit of Participants and their Beneficiaries. Except for this purpose, the Plan-Trustee shall be a directed trustee and shall be completely subject to the direction of the Administrator, Plan Coordinator, Participant, Beneficiary or alternate payee.
- 2.25 **Plan Year.** The calendar year.
- 2.26 **Regulations.** Treasury regulations 26 C.F.R. 1.0-1 et seq.
- 2.27 **Rollover Account.** The account maintained for each Participant (or Beneficiary, upon the death of the Participant) that is credited with the Participant's Rollover Contributions, and any earnings or losses credited thereon. The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any Eligible Retirement Plan that is not an eligible governmental plan under Section 457(b) of the Code and a separate account for any eligible rollover distribution paid to the Plan from any Eligible Retirement Plan that is an eligible governmental plan under Section 457(b) of the Code.
- 2.28 **Rollover Contribution.** An amount rolled over by an Eligible Employee from one or more Eligible Retirement Plans.
- 2.29 **Seasonal Employee.** Any Employee who normally works on a full-time basis less than 5 months in a year.

### **2.30 Separation from Service.**

- a. If the Participant is an Employee, the severance of an Employee's employment relationship with the Employer.
- b. If the Participant is an Independent Contractor, the expiration of the independent contractor's contract(s) under which services are performed shall be determined under Regulation Section 1.457-6(b)(2).

**2.31 Temporary Employee.** Any Employee performing services under a contractual arrangement with the Employer of two (2) years or less duration that is not likely to be extended. Possible contract extensions may be considered in determining the duration of a contractual arrangement if there is a significant likelihood that the Employee's contract will be extended. Future contract extensions are considered likely if (1) on average 80% of similarly situated Employees have had bona fide offers to renew their contracts in the immediately preceding two academic or calendar years, or (2) the contract history of a particular Employee in that position indicates that the Employee is not a Temporary Employee.

**2.32 Unforeseeable Emergency.** An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined by the regulations under the Code); the loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for funeral expenses of Participant's spouse or dependent (as defined by the regulations under the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in the Section, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

## **ARTICLE III ADMINISTRATION**

**3.01 Administrator.** The Office of the State Treasurer is the Administrator of the Plan. (hereinafter referred to as the "Administrator"). Assisting the Administrator and its senior managers with the Plan's ongoing administration is the Deferred Compensation Committee. The Deferred Compensation Committee was established by the Legislature, and includes three members. The members are appointed by the Governor, the Commissioner of Insurance and the Treasurer.

**3.02 Power and Authority.** The Administrator shall have full power and authority to administer the Plan on behalf of the Employer; to adopt rules and regulations for the administration of

the Plan, provided they are not inconsistent with the provisions of the Plan, and Section 457(b) of the Code and any regulations promulgated thereunder; to interpret, alter, amend or revoke any rules and regulations so adopted; to enter into contracts on behalf of the Plan; to make discretionary decisions under this Plan including withdrawal determinations required in Article VII; to demand satisfactory proof of the occurrence of any event that is a condition precedent to the commencement of any payment or discharge of any obligation under the Plan; and to perform any and all administrative duties under this Plan.

- 3.03 **Delegation of Authority.** The Administrator has general authority under the Plan. The decisions of the Administrator shall be final, binding, and conclusive on all interested persons for all purposes. The Administrator may delegate his general authority as he deems appropriate in accordance with the terms of the Plan and applicable law and regulation, provided, however, that any such delegation shall be subject to revocation at the discretion of the Administrator.
- 3.04 **Selection Powers.** The Administrator shall screen and select any entity seeking to act as Plan Coordinator or offer Investment Products under this Plan. The Administrator shall select the Investment Products made available under this Plan in accordance with the procedures set forth in Chapter 29 Section 64 of the Massachusetts General Laws.
- 3.05 **Administrative Expenses.** All costs and expenses incurred in connection with investments, other than those incurred in connection with requests for responses and consultants, shall be borne by Participants from the appropriate account(s) and appropriately reflected in the balance thereof.
- 3.06 **Duties of Government Bodies Executing a Joinder Agreement.** Any government body that has executed a joinder agreement as set forth in Article I must comply with all of the requirements of the Administrator.

#### ARTICLE IV PLAN PARTICIPATION

- 4.01 **Eligibility.** Any Eligible Employee who performs services for the Employer for which remuneration is paid is eligible to participate in the Plan. As provided in Article XV, plan participation is mandatory for certain classes of Eligible Employees. For all other classes of Eligible Employees, participation is voluntary. To participate in the Plan on a voluntary basis, an Eligible Employee must (a) execute a Deferral Agreement with the Employer and agree to a salary reduction amount of **not less than \$20 per month**, (b) roll over an amount from one or more Eligible Retirement Plans, or (c) do both (a) and (b).
- 4.02 **Deferrals Under the Plan:**
- a. **Initial Deferral Agreement.** To defer Compensation under this Plan, an Eligible Employee must execute an election to defer a portion of his or her Compensation (and have that amount contributed as Deferred Compensation on his or her behalf) by entering into a Deferral Agreement. Unless the individual specifies a later date, such

- election under a Deferral Agreement will become effective no earlier than the calendar month following the month in which the election is made. A new Eligible Employee may defer compensation payable in the calendar month during the Participant first becomes an Employee if a Deferral Agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.
- b. **Changes in Deferral Amount.** Subject to other provisions of this Plan, a Participant may at any time modify his or her participation election, including a change of the amount of his or her compensation deferred, by entering into a new Deferral Agreement. Unless the election specifies a later effective date, a change in the amount of the Deferred Compensation shall take effect as of the first day of the next following month or as soon as practicable if later. A change in the investment direction will take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation will take effect when the election is accepted by the Administrator.
  - c. **Revocation of Deferral Agreement.** A Participant may at any time revoke a Deferral Agreement to defer compensation with respect to compensation not yet earned. The revocation is effective and the Participant's full compensation will be restored in the month subsequent to the month such revocation is approved by the Employer. Amounts previously deferred shall be paid only as provided in this Plan.
  - d. **No Federal Income Tax Withholding at Time of Deferral.** The Employer shall contribute the amount of compensation deferred by the Participant to the trust under the Plan at the end of each pay period. To the extent permitted by law, the amounts deferred shall not be treated as compensation subject to federal income tax withholding.
  - e. **Disability.** A disabled Participant may elect to defer a portion of his or her Compensation (and have that amount contributed on his or her behalf) during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Separation from Service.
  - f. **Sick, Vacation, and Back Pay.**
    - 1. **Deferral of Sick Pay.** A Participant who separates from service due to retirement may elect to defer accumulated sick pay in accordance with M.G.L. c. 29. Only a person who is retiring can defer accumulated sick pay. In addition, a retiring participant may also defer accumulated vacation pay and/or back pay as provided below.
    - 2. **Deferral of Vacation and/or Back Pay.** A Participant who separates from service and is not retiring, may elect to defer accumulated vacation pay and/or back pay.

Deferrals permitted under this Section 4.02 f. may be deferred for any calendar month only if the amount would have been available for use or would have been

paid to the employee if employment had not terminated, is paid within two and a half (2 1/2) months following a Separation from Service and an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available

- 4.03 **Rejoining the Plan.** A Participant who had a Separation from Service and received a distribution of his entire Account from the Plan, and who returns to being an Eligible Employee after a Separation from Service, may again become a Participant in the Plan and agree to defer compensation by entering into a new Deferral Agreement in a subsequent calendar month following the withdrawal or revocation as provided in Subsection 4.02 a. above or by making a Rollover as described in Article XIII. However, a Participant on an authorized leave of absence, or an individual who has a Separation from Service but has not received a distribution of his entire Account from the Plan, shall remain a Participant as set forth in Article X.

## ARTICLE V INVESTMENT OF COMPENSATION DEFERRED

- 5.01 **Participant to Direct Investments.** Each Participant (or Beneficiary upon the Participant's death) shall direct the investment of his Deferred Compensation, and his Account, among the Investment Options. Transfers between Investment Options shall be subject to any limitations or restrictions contained in such Investment Options or otherwise established by the Administrator.
- 5.02 **Changes in Investment Selection.** A Participant may modify the investment selection in accordance with the rules established by the Administrator. In addition, upon the death of the Participant, the Beneficiary shall have the same right to make investment changes with respect to his Account.
- 5.03 **Failure to Give Investment Direction.** If at any time a Participant (and, when applicable, each Beneficiary or Alternate Payee) fails to exercise his duty of investment direction (or an investment direction is refused), the Plan Administrator shall, to the extent of the failure of proper investment direction, cause the Deferred Compensation Account to be invested as specified by a procedure adopted by the Plan Administrator.
- 5.04 **Approved Investment Options.** Investment Options that may be approved by the Administrator and made available under the Plan include mutual funds, annuity contracts, life insurance contracts, bank investment trusts, self directed brokerage arrangements and any other vehicle in which the Plan is allowed to invest pursuant to the laws of the Commonwealth of Massachusetts. The Administrator may from time to time restrict investment in certain Investment Options.

In the event that a Participant maintains an approved life insurance Investment Option offered under the Plan, no more than 25% of the contributions being made on the Participant's behalf shall be used to fund the life insurance policy (except to avoid underfunding.)

- 5.05 Timely Investment of Deferrals.** The Employer, as soon as administratively feasible, shall forward all deferrals by Plan Participants to the Plan Coordinator for investment in the Investment Option(s) selected by the Participant. The Plan Coordinator or Administrator shall have no duty to determine whether the dollars paid by the Employer on behalf of a Participant are in accordance with the most recently executed Deferral Agreement. Earnings accrue on Deferred Compensation upon actual investment in the Investment Option(s).
- 5.06 Corrective Distribution.** If the Deferred Compensation Contributions made by or on behalf of a Participant exceed the limitations described above, then a distribution shall be made to remedy a violation or correct a potential violation of the limitations.
- A corrective distribution made pursuant to this paragraph shall be made as soon as administratively practicable after the Plan determines that there is an excess amount and shall include a distribution of the allocable net income on the excess amount. A corrective distribution and any allocable net income thereon is taxable to the Participant in the year in which the corrective distribution is made. A corrective distribution made pursuant to this paragraph cannot be counted as a required distribution for the purposes of applying the minimum distribution requirements of Section 6.05 or otherwise under Section 401(a)(9) of the Code.
- 5.07 Right to Decline Participant Direction.** The Administrator or Plan Coordinator may decline to implement any investment direction if:
- a. the person giving the investment direction is legally incompetent;
  - b. the investment direction would be contrary to the Plan;
  - c. the investment direction would be contrary to a valid and enforceable court order; or
  - d. the investment direction would jeopardize the Plan's status as an eligible 457(b) plan under the Code.
- 5.08 Assets For Exclusive Benefit of Participants and Beneficiaries.** All amounts of Compensation deferred under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust (or a custodial account or annuity contract described in Code Section 401(f)) for the exclusive benefit of Participants and their Beneficiaries. All such amounts shall not be subject to the claims of the Employer's general creditors.
- 5.09 Determination of Amount of Benefit Payments.** The amount of any benefit payment to a Participant or Beneficiary made pursuant to this Plan shall be determined by the value at the time of such payment of the Investment Options(s) selected by the Participant or Beneficiary, as applicable, in accordance with elections in the Deferral Agreement and the provisions of the Plan. The Administrator, Plan Coordinator, and Employer shall not be responsible for the investment or performance results of the Investment Options.

- 5.10 **Plan Administrator Relieved from Fiduciary Responsibility.** The Office of the State Treasurer shall have all powers with respect to such invested funds as granted by the Enabling Statute. Neither the Commonwealth, the Office of the State Treasurer, the Treasurer, nor the Deferred Compensation Committee, shall incur any liability to any Participant, Beneficiary, or other party with respect to the investment of, or return on, any funds to which a Participant or any Beneficiary may at any time become entitled.

## **ARTICLE VI BENEFITS**

### **6.01 General Benefit Terms.**

#### **a. Manner and Method of Payment.**

- (i) Benefit payments to a Participant or Beneficiary shall be made according to the manner and method of payment as elected in a writing on a form acceptable to the Administrator, which election may be changed by a Participant or a Beneficiary as appropriate and as allowed by the Plan at any time prior to the commencement of such benefit payments pursuant to the method and manner of payment elected.
- (ii) Subject to the restrictions on choice of benefit contained in Subsections 6.01 b. and 6.01 c., and Sections 6.03 and 6.04, the options available for selection by the Participant or Beneficiary as to the manner and method of payment are:
  - 1) Lump sum;
  - 2) periodic payments for a designated period;
  - 3) periodic payments for life;
  - 4) periodic payments for life with a guaranteed minimum number of payments;
  - 5) periodic payments for the life of the Participant with continuation of the payments or a percentage of the payments for the lifetime of the Participant's surviving spouse;
  - 6) any other option that complies with Code Sections 401(a)(9) and 457(d), and is permitted under an Investment Product approved by the Administrator.

#### **b. Default Payment Method.** In the absence of an election of the manner and method of such benefit payments in writing on a form acceptable to the Administrator as in subsection 6.01 a. (ii), the Employer shall make payments to the Participant or Beneficiary as follows:

- if the value of the Participant's Deferred Compensation Account does not exceed \$1,000, payment will be made immediately in the form of a lump sum distribution;

- if the value of the Participant's Deferred Compensation Account exceeds \$1,000 benefits under the Plan shall commence as of April 1 of the calendar year in which the Participant attains age 70 ½ or Separates from Service, whichever occurs later; and be made over the life of the Participant (or the lives of the Participant and the Participant's Beneficiary, if there is one).

Notwithstanding anything to the contrary in this Section 6.01 b., if the Participant has a life insurance policy that is not immediately subject to payment under the terms of the policy, the policy will be immediately transferred to an individually owned direct pay life insurance policy outside of the Plan.

- c. **Code Restrictions.** All distributions under the Plan shall comply with the provisions of Code Sections 457(d) and 401(a)(9).
- d. **Required Beginning Date.** Benefits under the Plan must either: (i) be distributed by April 1 of the calendar year following the calendar year in which the Participant attains age 70 ½ or retires, whichever occurs later; or (ii) commence no later than April 1 of the calendar year described in (i) and be made over the life of the Participant (or the lives of the Participant and the Participant's Beneficiary) or over a period not exceeding the life expectancy of the Participant (or the life expectancies of the Participant and his Beneficiary).

For purposes of this provision, life expectancy(ies) shall be determined using the Uniform Lifetime Table or the Joint and Last Survivor Table, as applicable, of Section 1.401(a)(9)-9 of the Regulations..

- e. **Elections to Accelerate Benefit Payments.** Benefit payments to a Participant or Beneficiary shall commence at the time provided in the Plan, subject to an election by the Participant or Beneficiary as appropriate to accelerate the beginning of such payments or a portion of such payments to an earlier date as allowed by the Plan and pursuant to the Participant Agreement.

Subject to the restrictions of Section 6.01 c., above, a Participant who commenced receipt of benefits or elected a deferral prior to 2002 may, subsequent to his or her initial election, elect to modify the form of benefits or receive the payments at an earlier date as allowed by the Plan.

- f. **In-Service Distributions at Age 70½.** If Participant attains age 70½ prior to a separation from service, the Participant may elect in writing, any time after the date the Participant has attained age 70½, to receive benefit payments pursuant to the method and manner of payment elected.
- g. **De Minimis In-Service Distributions.** If, prior to Separation from Service, the value of a Participant's Deferred Compensation Account under the Plan does not exceed \$5,000, the Participant may elect at any time to receive such value in a lump sum if: 1) the Participant has not deferred any Compensation under the Plan during the two year



period ending on the date of distribution; and 2) the Participant has not previously received a distribution under this Subsection.

- h. **Mandatory Distributions for Certain Account Balances of \$1,000 or Less.** After a Separation from Service, at the direction of the Administrator, a Participant's total Deferred Compensation Account shall be paid in a lump sum as soon as practicable following the direction, if the total Deferred Compensation Account does not exceed \$1,000 (or the dollar limit under Section 411 (a)(11) of the Code, if greater).

#### 6.02 Benefits Upon Separation from Service:

- a. **Prior to Age 70 ½.** If a Separation from Service occurs prior to the Participant's attainment of age 70 ½, the Participant may elect in writing, at any time after the date of the Separation from Service to accelerate the receipt of such payments, or any portion of such payments, to a date not earlier than 30 days after the written election as provided in such election.
- b. **On or after Age 70 ½.** If a Separation from Service occurs on or after the Participant's attainment of age 70 ½, the Employer shall begin benefit payments on April 1 of the calendar year following the calendar year in which the Participant Separates from Service, in accordance with the provisions of subsections 6.01 and with the election made by the Participant in the written election.

#### 6.03 Benefits Upon Death After Commencement of Benefits:

- a. **To the Designated Beneficiary.** Should the Participant die at any time after benefit payments have commenced, the Employer shall continue payment to the Beneficiary of the payments as specified in the form of benefits elected by the Participant. Payments to the Beneficiary shall continue under the option selected by the Participant in the written election, unless the Beneficiary selects at any time and from time to time an alternate payment option that provides for payments at least as rapidly as those being made to the Participant, and satisfies any other applicable Plan distribution requirements.
- b. **In Absence of a Designated Beneficiary.** If a Participant fails to designate a Beneficiary, if the Beneficiary predeceases the Participant or if the Beneficiary designation is invalid, the person(s) entitled to the residuary estate of the Participant's estate is (are) the Beneficiary(s), to the extent of the invalid designation, with the applicable share of the Deferred Compensation divided among those Beneficiaries in the same shares as their shares of the residuary estate. For the purposes of this provision, the Administrator may rely on the written statement of the duly appointed personal representative of the Participant's probate estate as to the identity (including name, address, and Taxpayer Identification Number) of and shares allocable to the person(s) entitled to such residuary estate. For this purpose, the duly appointed personal representative of the Participant's probate estate means the person named by an order of the court (or of a registrar or administrator under the court's supervision) having jurisdiction over the estate of the Participant that grants the person the authority to

receive the property of the deceased Participant. If for any reason the Beneficiary designation fails or becomes invalid, or the Participant's probate estate is closed, any person(s) or entity asserting a claim to be a Beneficiary must present to the Administrator a court order declaring entitlement and share of the funds credited to the Participant's Account to which they are entitled.

- 6.04 **Benefits Upon Death Prior To Commencement of Benefits.** Should the Participant die at anytime before benefit payments have commenced, the Employer shall commence benefit payments to the Beneficiary over a period not to exceed the life expectancy of the Beneficiary.
- 6.05 **Rollovers From the Plan.** Notwithstanding the foregoing and Article XV, if the distributee of any eligible rollover distribution:
- a. elects to have such distribution paid directly to an Eligible Retirement Plan, and
  - b. specifies the Eligible Retirement Plan to which such distribution is to be paid (in such form and at such time as the Administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the Eligible Retirement Plan so specified. Within a reasonable period of time in advance of making an eligible rollover distribution from the Plan, the Administrator shall provide a written explanation of rollover eligibility to the recipient as required by Code Section 402(f).

## **ARTICLE VII UNFORESEEABLE EMERGENCY WITHDRAWALS**

- 7.01 **Availability.** In the event of an unforeseeable emergency, a Participant may apply to the Plan Coordinator for withdrawal of an amount to the extent necessary to satisfy the emergency need. If the Plan Coordinator approves such application for withdrawal, consistent with procedures approved by the Administrator, the withdrawal will be effective at the later of the date specified in the Participant's application or the date of approval by the Plan Coordinator. The approved amount shall be payable in a lump sum within thirty (30) days of such effective date or in some other manner consistent with the emergency need as determined by the Plan Coordinator. In the case of a denied unforeseeable emergency withdrawal application, the Participant may appeal to the Administrator. The Participant shall write a letter of appeal to the Administrator stating why he/she believes the request for an unforeseeable emergency withdrawal should have been approved. The Participant must enclose with this appeal a copy of the denial letter from the Plan Coordinator and all relevant paperwork, including a copy of any new supporting documentation. The Administrator shall review all documentation and either approve or deny the appeal within 5 to 7 business days. The Administrator shall respond to the Participant by letter, and forward copies of all appeals to the Plan Coordinator. Should the Plan Administrator approve the request, the Administrator shall inform the Plan Coordinator to process the unforeseeable emergency for a certain dollar amount. If the Plan Administrator denies the appeal, the Participant has the right to re-apply to the Plan Coordinator with new supporting documentation. Unforeseeable emergency withdrawals

are permitted prior to the commencement of distributions, and after the commencement of benefit payments as long as an annuity payment option has not been selected.

- 7.02 **Unforeseeable emergency distribution standard.** A distribution in the event of an unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.
- 7.03 **Distribution necessary to satisfy emergency need.** Distributions based on an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).
- 7.04 **Distribution.** If the Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section.
- 7.05 **Payment.** In no event shall the amount of a withdrawal for an unforeseeable emergency exceed the amount of benefits that would have been available to the Participant at the time of withdrawal. Notwithstanding any other provision of this Plan, if a Participant makes a withdrawal hereunder, the value of benefits under the Plan shall be appropriately reduced to reflect such withdrawal, and the remainder of any benefits shall be payable in accordance with otherwise applicable provisions of the Plan. The Participant may specify that the withdrawal be taken pro rata from all Investment Options, or that it should be taken from specific Investment Options. In the absence of any direction by the Participant, the withdrawal shall first be taken pro rata from all Investment Options other than life insurance, and second from life insurance to the extent amounts available under the non-life insurance Investment Options are insufficient.

## **ARTICLE VIII WITHDRAWALS OF ROLLOVER ACCOUNT**

- 8.01 **Withdrawal of Rollover Account.** A Participant may elect at any time to withdraw all or any part of his Rollover Account, to the extent permitted by regulations, subject to any restrictions of the Investment Options.

## **ARTICLE IX DOMESTIC RELATIONS ORDERS**

- 9.01 **Recognition of Approved Domestic Relations Orders.** The Plan recognizes and gives effect to Domestic Relations Orders (DRO) that have been approved by the Plan Coordinator in accordance with Plan procedures and, pursuant to state law, create or

recognize the existence of the right of an alternate payee to receive all or a portion of any deferred compensation of a Participant in accordance with the criteria set forth below. A DRO that has been approved by the Plan Coordinator shall be deemed a "qualified domestic relations order" pursuant to Section 414(p)(1) and 414(p)(11) of the Code.

**9.02 DRO Information.** A DRO shall not be allowed unless approved by the Plan Coordinator in accordance with the following Plan procedures.

- a. The DRO must be a court order. The order must be an original or a court-certified copy of the original. A fax or photocopy cannot be accepted.
- b. The DRO must relate to the provision of child support, alimony, or marital property rights to a spouse or former spouse or child of a participant, and be made pursuant to state domestic relations law or similar community property law. A divorce decree or settlement of marital property agreement will not meet the requirements of a DRO; the DRO must be a stand-alone document.
- c. The DRO must clearly and unambiguously refer to the Commonwealth of Massachusetts Deferred Compensation Plan by name.
- d. The DRO must clearly specify the name, mailing address, social security number, and date of birth of the Participant and the alternate payee.
- e. The DRO must include the amount or percentage, or the manner in which the amount or percentage is to be determined, of the Participant's Account to be paid to the alternate payee's account. The calculation of this amount should be very clear and not subject to interpretation.
- f. The DRO must provide that the alternate payee's account shall bear all fees and expenses as though the alternate payee was a Participant.
- g. The DRO must not require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan, except that it can provide that payment to an alternate payee prior to a Participant's Separation from Service.
- h. At the time the alternate payee is entitled to a distribution under the Plan, he or she may select, in accordance with the provisions of Sections 6.01 and 6.02, or, if applicable, Article XV, from any of the permitted payment methods available to the Participant.
- i. If the DRO is received after the Participant's commencement of distributions, the order cannot modify the payment method selected, but must divide the payments as they are to be received.
- j. The DRO must not require the Plan to provide increased deferred compensation.
- k. The DRO must not require any distribution to an alternate payee that is required to be paid to another person under any court order.

- l. IRC Section 414(p) provides that the Alternate Payee will be responsible for the taxes due on amounts paid to the Alternate Payee.
- m. The DRO must not provide for more than one alternate payee.
- n. The DRO must provide that the calculation of the amount to be segregated to the alternate payee's account be readily calculable from the records of the current Plan Coordinator.
- o. The DRO must not provide for the calculation of gains/losses/earnings from the valuation date to the date the Plan Coordinator determines that the DRO satisfies the requirements of the Plan.
- p. The DRO must not include any provision that does not relate to this Plan. Therefore, the DRO cannot include direction regarding a benefit from another plan, including but not limited to another retirement plan, a health plan or an employee benefit plan other than this Plan.

## **ARTICLE X**

### **LEAVE OF ABSENCE AND MILITARY SERVICE**

- 10.01 **Approved Leave.** A Participant on an approved leave of absence with or without compensation may continue to participate in the Plan subject to all the terms and conditions of the Plan; provided further, compensation may be deferred for such Participant if such compensation continues while the Participant is on an approved leave of absence.
- 10.02 **Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the employer had continued(at the same level of compensation) without the interruption or leave, reduced by the Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

## **ARTICLE XI**

### **NON-ASSIGNABILITY CLAUSE**

- 11.01 Except as provided in Article IX neither the Participant nor any other person shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights thereto are expressly

declared to be unassignable and nontransferable. Furthermore, no unpaid benefits shall be subject to attachment, garnishment, or execution for payment of any debts, judgments, alimony or separate maintenance owed by the Participant or any other person or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.

## ARTICLE XII AMENDMENT OR TERMINATION OF PLAN

- 12.01 **Administrator Power to Amend.** The Administrator may amend the provisions of this Plan at any time, with or without prior notice to governmental bodies that have adopted the Plan, provided that no amendment shall affect the rights of a Participant or Beneficiary to the receipt of benefits with respect to any compensation deferred before the time of amendment, as adjusted for the investment experience of the Investment Options prior to or subsequent to the amendment. The Administrator shall give notice of any Plan amendment(s) to all governmental bodies that have adopted the Plan.
- 12.02 **Plan Termination.**
- a. **Termination as to All Employers** The Administrator may terminate this Plan as to all Employers at any time, with or without prior notice to governmental bodies that have adopted the Plan, provided however, no termination shall affect the rights of a Participant or a Beneficiary to the receipt of benefits with respect to any compensation deferred before the time of the termination as adjusted for the investment experience of the Investment Options prior to or subsequent to the termination. The Administrator shall give notice of termination to governmental bodies that have adopted the Plan.
  - b. **Termination as to Certain Employers.** A governmental body that has previously adopted the Plan may terminate the Plan as to the Employees of such governmental body, following the adoption of an appropriate resolution or the taking of such legal action necessary to authorize the termination.
- 12.03 **Effect of Termination.** Upon termination of the Plan as to any Employer, the Participants to whom the Plan had been made available through such Employer will be deemed to have withdrawn from the Plan as of the date of such termination. The full compensation of all Participants will be thereupon restored on a non-deferred basis. Plan benefits shall not be distributed at the time of such termination; but all amounts of Deferred Compensation shall be retained and Plan benefits shall only be paid or disposed of as otherwise provided in the Plan and according to the terms and conditions of the Plan.

## ARTICLE XIII ROLLOVERS AND PLAN-TO-PLAN TRANSFERS

- 13.01 **Transfers from Other 457(b) Plans.** As agreed to by the Administrator as provided to the Plan Coordinator, this Plan shall accept for transfer amounts of compensation

previously deferred pursuant to another eligible plan of deferred compensation established pursuant to Section 457(b) of the Code maintained by another employer.

- 13.02 **Transfers to Other 457(b) Plans Upon Separation From Service.** If the Participant separates from service to accept employment with or perform services for another employer which maintains an eligible plan of deferred compensation pursuant to Section 457(b) of the Code, the amounts deferred under this Plan shall, at the Participant's election, be transferred to such other "eligible" plan, provided such other plan provides or is able to provide for the acceptance of such amounts. The Participant's election to transfer must be made prior to the date benefits would otherwise become payable pursuant to the terms of this Plan.
- 13.03 **Transfers to Other 457(b) Plans Prior to Separation From Service.** A Participant is permitted to transfer benefits under this Plan to another eligible 457(b) plan while remaining employed with his current employer, if the following conditions are met:
- a. the investment products to which assets are being transferred were selected through a bid solicitation process or pursuant to a statutory exception from bid solicitation in the manner provided by applicable state law; and
  - b. the employer (through its payroll personnel) certifies the plan's compliance with the above-referenced laws.
- 13.04 **Transfers to Qualified Governmental Defined Benefit Plans Prior to Separation From Service.** A Participant is permitted to transfer benefits under this Plan to a qualified defined benefit plan described in Code Section 401(a) that is a governmental plan within the meaning of Code Section 414(d) while remaining employed with his current employer, if such amount is:
- a. for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under such plan, or
  - b. a repayment to which Code Section 415 does not apply by reason of subsection (k)(3) thereof.
- 13.05 **Transfers Related to Mandatory Contributions Under Article XV in Any 457(b) Plan.** Notwithstanding any provision in the Plan to the contrary, amounts attributable to Mandatory Contributions under any 457(b) Plan can only be transferred to the Investment Options permitted under rules established by the Administrator.
- 13.06 **Rollovers From Eligible Retirement Plans.** As agreed to by the Administrator and provided to the Plan Coordinator, this Plan shall accept for rollover, amounts of compensation distributed to the Participant from an Eligible Rollover Plan.
- 13.07 **Rollovers To Eligible Retirement Plans.** If the Participant separates from service to accept employment with or perform services for another employer with an Eligible Rollover Plan, the amounts deferred under this Plan shall, at the Participant's election, be directly rolled over to such Eligible Rollover Plan, provided such Eligible Rollover Plan

provides or is able to provide for the acceptance of such amounts. The Participant's election to roll over must be made prior to the date benefits would otherwise become payable pursuant to the terms of this Plan.

**13.08 Eligible Rollover Contributions to the Plan. Regardless of whether an Eligible Employee elects to enter into a Deferral Agreement, s/he may roll amounts into the Plan from any Eligible Retirement Plan.**

- a. A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another Eligible Retirement Plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an Eligible Retirement Plan within the meaning of Section 402(c)(8)(B) of the Code.
- b. For purposes of this Section 13an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another Eligible Retirement Plan, except that an eligible rollover distribution does not include: (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution.
- c. The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any Eligible Retirement Plan that is not an eligible governmental plan under Section 457(b) of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any Eligible Retirement Plan that is an eligible governmental plan under Section 457(b) of the Code.

**13.09 Rollover Distributions.**

- a. A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in Section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover.
- b. For purposes of this Section 13.09, an eligible rollover distribution means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include (a) any installment payment under



6.01 for a period of 10 years or more (b) any distribution made under Section 7.04 as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9). In addition, an Eligible Retirement Plan means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution.

#### **ARTICLE XIV MISCELLANEOUS**

- 14.01 Compliance with Code Section 457(b).** The intention of the Employer is that the Plan shall comply with the provisions of Section 457(b) of the Code and the corresponding provisions of any subsequent laws. The provisions of the Plan shall be construed to effectuate such intention.

In the event any provision shall be determined to be illegal or invalid for any reason, the illegal or invalid provision shall not affect the remaining parts of the Plan and the Administrator may perform such alternative acts which most clearly carry out the intent and purpose of the Plan.

- 14.02 Headings.** The headings of the Articles and Sections of this Plan are for reference only and shall have no substantive effect on the provisions of the Plan.
- 14.03 Investment Providers Not Parties to the Plan.** Any company issuing policies, contracts, funds, or other investments available under the Plan shall have no responsibility or accountability to the Participant or Beneficiary with respect to the operation of the Plan.
- 14.04 Delay of Benefit Payments.** The Administrator or Plan Coordinator may delay payment of a distribution to a Participant or Beneficiary for any of the following reasons:
- a. if a dispute arises as to the proper payee
  - b. if the paperwork is not in good order to enable it to be processed by the Plan Coordinator
  - c. if notice of legal proceeding involving the Participant's Account has been received and restricts payments from such Account; or
  - d. for any other lawful purpose.
- 14.05 Disputes.** If a dispute as to the proper payee arises, the Administrator or Plan Coordinator may delay payment until after the dispute is resolved by a court of competent jurisdiction or is settled by the parties involved.

- 14.06 **Payments to Minor Beneficiaries.** If a payment is to be made to a minor Beneficiary, payment shall be made to a person or entity determined by the Administrator to be a proper recipient for the Beneficiary under applicable state law. This may include a duly appointed and currently acting legal guardian or conservator, a duly appointed and currently acting attorney-in-fact, an adult who is a relative of the Beneficiary or with whom the Beneficiary resides, or to a court having jurisdiction over the estate of the Beneficiary. The Administrator or Plan Coordinator has no duty to supervise or inquire into the application of any amounts so paid.
- 14.07 **Payments to Incompetent Participant or Beneficiary.** If a payment is to be made to a Participant or Beneficiary that the Administrator determines to be unable to make or communicate responsible decisions concerning his or her property for any reason including mental illness, mental deficiency, physical illness, physical disability, chronic use of drugs or alcohol, payment shall be made to the proper recipient as allowed under applicable state law. This may include payment to a duly appointed and acting legal guardian or conservator, a duly appointed and acting attorney-in-fact, an adult who is a relative or with whom the Participant or Beneficiary resides, a court having jurisdiction over the estate of the Participant or Beneficiary, or to a court determining the competency of the Participant or Beneficiary. The Administrator or Plan Coordinator has no duty to supervise or inquire into the application of any amounts so paid.
- 14.08 **Binding Contract.** This Plan, and any amendments hereto, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees and on all Participants and Beneficiaries.
- 14.09 **Assumption of Risk.** Each Participant and Beneficiary assumes all risk in connection with the investment decisions made and any decrease in the value of their Accounts. None of the Administrator, Plan Coordinator, Employer, nor the Plan shall be liable or responsible for any investment losses under the Plan.
- 14.10 **Applicable Law.** The provisions of the Plan shall be construed under the laws of the Commonwealth of Massachusetts.

**ARTICLE XV**  
**SPECIAL RULES FOR PART-TIME, SEASONAL, TEMPORARY EMPLOYEES AND**  
**CERTAIN OTHERS FOR MANDATORY CONTRIBUTIONS AND VOLUNTARY**  
**CONTRIBUTIONS**

- 15.01 **Eligibility.** Notwithstanding any other provision of the Plan, the Administrator shall accept as Participants those who meet the criteria outlined in this Section as follows:
- a. Part-time Employees, Seasonal Employees and Temporary Employees, who are receiving Compensation from an Employer for services performed for the Employer

and who are not otherwise eligible to participate in a retirement system provided under Massachusetts General Laws Chapter 32 or any other retirement system which meets the requirements of Code § 3121(b)(7)(F) and the regulations.

- b. Any Employees who are receiving Compensation from an Employer for services performed for the Employer and who are not otherwise eligible to participate in a retirement system provided under Massachusetts General Laws Chapter 32 or any other retirement system which meets the requirements of Code § 3121(b)(7)(F) and the regulations thereunder, because they have not satisfied the probationary period of employment before being eligible for participation in that retirement plan.
- c. Any Employees who are receiving Compensation from an Employer for services performed for the Employer and who have exercised an option not to otherwise participate in a retirement system provided under Massachusetts General Laws Chapter 32 or any other retirement system which meets the requirements of Code § 3121(b)(7)(F) and the regulations thereunder.
- d. The following Employees who would otherwise satisfy the provisions under A, B, and/or C of this Section are excluded from participation in the Plan:
  - Full-time students enrolled and regularly attending classes at the Employer, which is a school, for which they are performing services.
  - Transportation system employees who are performing services and are covered compulsorily under Section 210(k) of the Social Security Act.
  - Persons hired to be relieved from unemployment status.
  - Individuals paid for services performed in a hospital, home, or other institution where they are a patient or inmate.
  - Election officials or election workers receiving less than \$1,000, as indexed, in Compensation, in a calendar year.
  - Non-resident aliens temporarily residing in the United States with F-1, J-1, M-1 or Q-1 visas.
  - Emergency workers hired on a temporary basis due to fire, storm, snow, flood, hurricane, tornado, earthquake, or other similar emergency.
  - Individuals performing services compensated solely on a fee basis that is treated as a trade or business for purposes of inclusion of such fees in net earnings from self-employment.
  - Such other Employees who are exempted under applicable law.

**15.02 Mandatory Deferrals.** Participants who meet the requirements for Eligibility under Section 15.01 shall be subject to mandatory deferrals which shall equal the lesser of: 1) the minimum amount necessary to provide a minimum retirement benefit as defined by Treasury Regulations governing Code Section 3121(b)(7) (as of January 1, 2002, 7.5% of a Participant's Compensation), or 2) the Internal Revenue Service maximum limits for Code Section 457(b) plans.

- 15.03 **Minimum Deferrals.** Notwithstanding the provisions of Section 4.01 of the Plan, there are no minimum deferral amounts for Participants who meet the requirements for Eligibility under Section 15.01.
- 15.04 **Voluntary Deferrals.** Participants who meet the requirements for Eligibility under Section 15.01 may elect to defer an amount in excess of such mandatory contributions required under Section 15.02. Any such voluntary contributions will not be subject to the requirements of this Article but will instead be subject to all of the requirements and provisions set forth in the Plan. During any calendar year, the total of a Participant's mandatory and voluntary contributions cannot exceed the Normal Limitation (or Last Three Years Catch-up Limitation or Age 50 Catch-Up Limitation, if applicable).
- 15.05 **Transfers to Qualified Governmental Defined Benefit Plans Prior to Separation from Service.** A Participant who meets the requirements for Eligibility under Section 15.01 of this Plan Document may request a transfer of benefits under this Plan to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) that is a governmental plan within the meaning of Code Section 4.14(d) while remaining employed with his current employer provided that the requirements of Section 13.04 of this Plan Document are met.
- 15.06 **Transfers of Mandatory Contributions.** As permitted under Article XIII of this Plan Document, a Participant may request the transfer of benefits attributable to any Mandatory Contributions described in Section 15.02 of this Plan Document, above upon separation from service or upon meeting the criteria for voluntary participation in the Plan as set forth in Section 4.01 of this Plan Document.
- 15.07 **Non-forfeitable Benefits.** The benefits attributable to Mandatory Contributions shall be 100% non-forfeitable for Participants who meet the requirements for Eligibility under Section 15.01.
- 15.08 **Investments Authorized.** Investment of Mandatory Contributions made by Participants who meet the requirements for Eligibility under Section 15.01 shall be limited to the Investment Options permitted under rules established by the Administrator.
- 15.09 **Method of Distribution.** With respect to the payment of benefits attributable to Mandatory Contributions, distribution shall be made in a lump sum payment, except to the extent provided by Section 6.05. In its sole discretion, the Administrator may allow alternate forms of payment. Upon Separation from Service, the Participant may elect to defer the distribution to a later date (subject to the maximum timeframes specified in Article VI).
- 15.10 **Unforeseeable Emergency.** In the event of an Unforeseeable Emergency as defined in Article VII and administered under such Article, a Participant may request the distribution of benefits attributable to any Mandatory Contributions and/or Voluntary Contributions as necessary to relieve the emergency need.
- 15.11 **Mandatory Distributions.** Notwithstanding Section 15.09, the Plan may mandate the immediate lump sum distribution of benefits attributable to Mandatory Contributions if the